

DEC 20 2017



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 13, 2017

Michael Hicks, Area General Manager
Luis Damerell, Regional Environmental Manager
Robert Ellsworth, Regional Environmental Manager
Eric Diep
Pick-n-pull Richmond #12
1015 Market Ave.
Richmond, CA 94806

Pick-N-Pull Auto Dismantlers, LLC
299 SW Clay, Suite 350
Portland, OR 97201

CT Corporation System
Agent for Service of Process for Pick-N-Pull
Auto Dismantlers, LLC
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Tamara Lundgren, President and CEO
Schnitzer Steel Industries, Inc.
299 SW Clay, Suite 350
Portland, OR 97201

CT Corporation System
Agent for Service of Process for Schnitzer
Steel Industries, Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Steven Heiskell, or Current President and
CEO
U Pull It, Inc.
299 SW Clay, Suite 350
Portland, OR 97201

CT Corporation System
Agent for Service of Process for U Pull It,
Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Messrs. Hicks, Damerell, Ellsworth, Diep and the current facility manager of Pick-n-Pull Richmond #12:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Pick-n-pull Richmond # 12 industrial facility located at 1015 Market Avenue in Richmond, California

("Facility"). This letter is being sent to Pick-n-Pull Richmond #12, Pick-N-Pull Auto Dismantlers, LLC, U Pull It, Inc., Schnitzer Steel Industries, Inc., Michael Hicks, Luis Damerell, Robert Ellsworth, Eric Diep, Tamara Lundgren, and Steven Heiskell as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "PNP").

This letter addresses PNP's unlawful discharge of pollutants from the Facility into Wild Cat Creek. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." This letter notifies PNP of ongoing violations of the substantive and procedural requirements of the General Permit at the Facility.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places PNP on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against PNP under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. The Facility.

On May 6, 1997, PNP filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). On June 8, 2015, PNP filed an updated NOI under the 2015 General Permit. The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") and the State Board is 2 071001858 (listed in PNP's 1997 NOI as 2 07S001858). PNP certifies that the Facility is classified under SIC code 5015 ("motor vehicle parts, used"). The Facility collects and discharges storm water from its 11-acre industrial site into at least one storm water discharge location at the Facility. Based on information and belief, the storm water discharged by PNP is discharged to Wildcat Creek, which then flows to San Pablo Bay.

B. Water Quality Standards, Guidelines, and Numeric Action Levels.

The Regional Board has identified beneficial uses of the San Francisco Bay region's waters and established water quality standards for Wildcat Creek, Wildcat Creek Watershed, San Pablo Bay, and the San Francisco Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the "Basin Plan." *See* http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml. The beneficial uses of these waters include cold freshwater habitat, commercial and sportfishing, estuarine habitat, freshwater replenishment, industrial service supply, fish migration, navigation, preservation of rare and endangered species, water contact recreation, noncontact water recreation, shellfish harvesting, fish spawning, warm freshwater habitat, and wildlife habitat. The noncontact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Contact recreation includes swimming, wading, water-skiing, skin and scuba diving, surfing, whitewater activities, fishing, and uses of natural hot springs. *Id.* at 2.1.15.

The Basin Plan establishes water quality standards for Wildcat Creek, Wildcat Creek Watershed, San Pablo Bay, and San Francisco Bay. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3.3.21. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.14. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.12. The Basin Plan provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.6. The Basin Plan provides that the "pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at 3.3.9. The Basin Plan has a narrative oil and grease standard that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." *Id.* at 3.3.7. The Basin Plan provides a dissolved oxygen objective of 5.0 mg/L for waters designated as warm water habitat, and 7.0 mg/L for designated as cold water habitat. *Id.* at 3.3.5.

The Basin Plan establishes Freshwater Water Quality Objectives for zinc of 0.120 mg/L (4-day average ["4-DA"]) and 1-hour average ["1-HA"]); for copper of 0.009 mg/L (4-DA) and 0.013 mg/L (1-HA); and for lead of 0.0025 mg/L (4-DA) and 0.065 mg/L (1-HA). *Id.* at Table 3-4. In addition, the Basin Plan establishes a water quality objective for copper of 0.006 mg/L (4-

DA) and 0.0094 mg/L (1-HA) for San Pablo Bay. Table 3-3A. The EPA has adopted freshwater numeric water quality standards for zinc of 0.12 mg/L (Criteria Maximum Concentration – (“CMC”) and Criteria Continuous Concentration – (“CCC”)); for copper of 0.013 mg/L (CMC) and 0.009 mg/L (CCC); and for lead of 0.065 mg/L (CMC) and 0.0025 mg/L (CCC).

To the extent Wildcat Creek, into which PNP discharges has a salinity level equal to or greater than 10 parts per thousand 95% of the time, the Basin Plan’s Marine Water Quality Objectives would apply. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-DA) and 0.090 mg/L (1-HA); copper of 0.0031 mg/L (4-DA) and 0.0048 mg/L (1-HA); and lead of 0.0081 mg/L (4-DA) and 0.21 mg/L (1-HA). *Id.* at Table 3-3. EPA has adopted numeric water quality standards for copper of .0031 mg/L (4-DA) and .0048 mg/L (1-HA), for lead of .210 mg/L (4-DA) and .0081 mg/L (1-HA), and for zinc of .090 mg/L (4-DA) and .081 mg/L (1-HA). *Id.*

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).¹ The following benchmarks have been established for pollutants discharged by PNP: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; copper – 0.0636 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; and biochemical oxygen demand (“BOD”) – 30 mg/L. In addition to these general benchmarks, the EPA has adopted the a Sector Specific Benchmark for lead of 0.069 mg/L² for facilities operating under SIC code 5015.³ Table 8.M-1.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; copper – 0.0332 mg/L; and COD – 120 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0 - 9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

The Regional Board has identified the waters of San Pablo Bay as failing to meet applicable water quality standards for chlorade, DDT, dieldrin, dioxin compounds, furan compounds, invasive species, mercury, PCBs, and selenium. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml; https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/2016_303d/category5_report.shtml.

¹ The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

² Assumes a water hardness of 75-100 mg/L.

³ Assumes a water hardness of 75-100 mg/L.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit

PNP has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

PNP has discharged and continues to discharge storm water with unacceptable levels of aluminum, copper, COD, iron, lead, TSS, zinc, and pH in violation of the General Permit. PNP's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of the applicable numerical water quality standards. They have thus violated

Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling / Observation Date	Parameter	Observed Concentration / Conditions	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
4/13/2017	Copper	0.17 mg/L	0.013 mg/L / 0.0094 mg/L (Table 3-3A)	DP-1
1/10/2017	Copper	0.011 mg/L	0.0094 mg/L (Table 3-3A)	DP-1
11/19/2016	Copper	0.057 mg/L	0.013 mg/L / 0.0094 mg/L (Table 3-3A)	DP-1
10/28/2016	Copper	0.013	0.0094 mg/L (Table 3-3A)	DP-1
12/21/2015	Copper	0.019 mg/L	0.013 mg/L / 0.0094 mg/L (Table 3-3A)	DP-1
2/8/2014	Copper	0.014 mg/L	0.013 mg/L / 0.0094 mg/L (Table 3-3A)	DP-1
4/13/2017	Lead	0.27 mg/L	0.065 mg/L	DP-1
4/13/2017	Zinc	0.85 mg/L	0.12 mg/L	DP-1
11/19/2016	Zinc	0.13 mg/L	0.12 mg/L	DP-1
2/8/2014	pH	6	6.5-8.5 s.u.	DP-1
12/21/2015	pH	8.85	6.5-8.5 s.u.	DP-1
11/19/2013	Narrative	Oil Sheen	Basin Plan at 3.3.7	DP-1
9/21/2013	Narrative	Oil Sheen	Basin Plan at 3.3.7	DP-1
12/21/2012	Narrative	Oil Sheen	Basin Plan at 3.3.7	DP-1

The information in the above table reflects data gathered from PNP's self-monitoring during the 2012-2013, 2013-2014, 2014-2015, 2015-2016, and 2016-2017 wet seasons. CSPA alleges that since at least December 13, 2012, and continuing through the date of this notice,

PNP has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- Copper – 0.0013 mg/L (Freshwater Water Quality Objective, 1-hour average); 0.0094 mg/L Water Quality Objective for Copper in San Francisco Bay)
- Lead – 0.065 mg/L (Freshwater Water Quality Objective, 1-hour average)
- Zinc – 0.09 mg/L (Freshwater Water Quality Objective, 1-hour average)
- pH – 6.5 – 8.5 s.u.
- Oil and Grease – Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses. (Basin Plan at 3.3.7.)

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of applicable NALs and EPA benchmarks. The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling / Observation Date	Parameter	Observed Concentration / Conditions	EPA Benchmark Value / Annual NAL	Outfall (as identified by the Facility)
4/13/2017	Aluminum	26 mg/L	0.75 mg/L	DP-1
1/10/2017	Aluminum	1.40 mg/L	0.75 mg/L	DP-1
2016-2017 Reporting Year ⁴	Aluminum	6.98 mg/L	0.75 mg/L	DP-1
2/8/2014	Aluminum	1 mg/L	0.75 mg/L	DP-1
4/13/2017	Copper	0.17 mg/L	0.0636 mg/L (Benchmark) / 0.0332 mg/L (NAL)	DP-1
11/19/2016	Copper	0.057 mg/L	0.0332 mg/L (NAL)	DP-1
2016-2017 Reporting Year ⁵	Copper	0.063 mg/L	0.0332 mg/L (NAL)	DP-1

⁴ This value is represents the average of all aluminum measurements taken at the Facility during the 2016-2017 reporting year and is higher than 0.75 mg/L, the annual NAL for aluminum.

⁵ This value is represents the average of all copper measurements taken at the Facility during the

12/21/2015	Chemical Oxygen Demand	160 mg/L	120 mg/L	DP-1
4/13/2017	Iron	46 mg/L	1.0 mg/L	DP-1
1/10/2017	Iron	7.3 mg/L	1.0 mg/L	DP-1
11/19/2016	Iron	2.0 mg/L	1.0 mg/L	DP-1
2016-2017 Reporting Year ⁶	Iron	14.04 mg/L	1.0 mg/L	DP-1
1/22/2016	Iron	3 mg/L	1.0 mg/L	DP-1
12/21/2015	Iron	2.2 mg/L	1.0 mg/L	DP-1
2015-2016 Reporting Year ⁷	Iron	2.6 mg/L	1.0 mg/L	DP-1
2/8/2015	Iron	1.9 mg/L	1.0 mg/L	DP-1
2/8/2014	Iron	1.8 mg/L	1.0 mg/L	DP-1
4/13/2017	Lead	0.27 mg/L	0.014 mg/L (Benchmark) 0.262 mg/L (NAL)	DP-1
1/10/2017	Lead	0.024 mg/L	0.014 mg/L (Benchmark)	DP-1
11/19/2016	Lead	0.016 mg/L	0.014 mg/L (Benchmark)	DP-1
4/13/2017	Total Suspended Solids	690 mg/L	100 mg/L	DP-1
2016-2017 Reporting Year ⁸	Total Suspended Solids	189.88 mg/L	100 mg/L	DP-1
4/13/2017	Zinc	0.85 mg/L	0.04 mg/L (Benchmark) / 0.26 mg/L (NAL)	DP-1
1/10/2017	Zinc	0.069 mg/L	0.04 mg/L (Benchmark)	DP-1

2016-2017 reporting year and is higher than 0.0332 mg/L, the annual NAL for copper.

⁶ This value is represents the average of all iron measurements taken at the Facility during the 2016-2017 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.

⁷ This value is represents the average of all iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.

⁸ This value is represents the average of all TSS measurements taken at the Facility during the 2016-2017 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

11/19/2016	Zinc	0.130 mg/L	0.04 mg/L (Benchmark)	DP-1
2/8/2014	Zinc	0.066 mg/L	0.04 mg/L (Benchmark)	DP-1

The information in the above table reflects data gathered from PNP's self-monitoring during the 2012-2013, 2013-2014, 2014-2015, 2015-2016, and 2016-2017 wet seasons/reporting years. CSPA notes that PNP's sampling results from the 2015-2016 and 2016-2017 reporting years have now placed the Facility in Level 1 Status pursuant to the General Permit. CSPA alleges that since at least December 13, 2012, PNP has discharged storm water contaminated with pollutants at levels that exceed the applicable NALs and EPA Benchmarks for aluminum, copper, COD, iron, lead, TSS, and zinc.

CSPA's investigation, including its review of PNP's SWPPP, PNP's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA benchmark values and NALs, indicates that PNP has not implemented BAT and BCT at the Facility for its discharges of aluminum, copper, COD, iron, lead, TSS, zinc, pH, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. PNP was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, PNP is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since December 13, 2012, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that PNP has discharged storm water containing impermissible and unauthorized levels of aluminum, copper, COD, iron, lead, TSS, zinc, and/or pH in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.⁹

⁹ The rain dates on the attached table are all the days when 0.1 inches or more of rain was observed from a weather station maintained by the Contra Costa Water District near Diablo Creek Golf Course located approximately 22 miles away from the Facility. The data was downloaded via <http://ipm.ucanr.edu/calludt.cgi/WXSTATIONDATA?MAP=&STN=CONCORD.A> (Last accessed on December 7, 2017).

Further, CSPA puts PNP on notice that 2015 Permit Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) are each separate, independent requirements with which PNP must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the 2015 Permit's Effluent Limitations, including PNP's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State and are evidence of the Facility's failure to implement BAT and BCT, the NALs are not effluent limitations that by themselves determine whether an industrial facility has implemented BMPs that achieve BAT/BCT.¹⁰ Finally, even though in December 2016 PNP submitted an Exceedance Response Action Level 1 Report pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

The above-described unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of aluminum, copper, iron, lead, TSS, zinc, pH, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PNP is subject to penalties for violations of the General Permit and the Act since December 13, 2012.

B. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an

¹⁰ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D)–X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. § 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

The Facility's SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement advanced BMPs meeting the BAT and BCT standards and fails to adequately reduce the pollutants resulting from the Facility's industrial activities.

CSPA puts PNP on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and

data become available. PNP is subject to civil penalties for all violations of the CWA occurring since December 13, 2012.

C. Failure to Comply with 2015 Permit Evaluation and ERA Requirements

On or about September 29, 2016, PNP submitted an "Exceedance Response Action Evaluation and Report Level One" to the State Board's SMARTs system. The ERA Report and Level One status are triggered by exceedances of the NALs adopted in the 2015 General Permits. The ERA Level One report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." 2015 Permit, § VII.C.1.c.

PNP's ERA Level 1 report addresses the Facility's exceedance of the NAL for iron during the 2015-2016 reporting year. The iron NAL is an annual average of 1 mg/L. Although the report addresses iron, PNP failed to identify BMPs necessary to prevent future NAL exceedances or to comply with BAT/BCT requirement of the Permit. The measures identified in the ERA could not have achieved, and indeed did not achieve, the applicable NAL for iron.

Although "[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances." Fact Sheet, p. 60. Accordingly, CSPA puts PNP on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without adequate Level 1 ERA Reports for iron. These violations are ongoing. PNP is subject to civil penalties for each day it has failed to submit an adequate Level 1 ERA Report.

III. Persons Responsible for the Violations.

CSPA puts PNP, Pick-N-Pull Auto Dismantlers, LLC, U Pull It, Inc., Schnitzer Steel Industries, Inc., Michael Hicks, Luis Damerell, Robert Ellsworth, Eric Diep, Tamara Lundgren, and Steven Heiskell on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts PNP, Pick-N-Pull Auto Dismantlers, LLC, U Pull It, Inc., Schnitzer Steel Industries, Inc., Michael Hicks, Luis Damerell, Robert Ellsworth, Eric Diep, Tamara Lundgren, and Steven Heiskell on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of CSPA is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance,
3536 Rainier Avenue,

Stockton, CA 95204
Tel. (209) 464-5067

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Rebecca L. Davis
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
rebecca@lozeaudrury.com
michael@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects PNP to a penalty of up to \$37,500 per day per violation for all violations occurring since December 15, 2012, up to and including November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against PNP and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Rebecca L. Davis
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

SERVICE LIST – via certified mail

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jefferson B. Sessions III, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A
Rain Dates, Pick-n-Pull Richmond #12, Concord, CA

12/2/2012	11/30/2014	1/22/2016
12/21/2012	12/2/2014	1/29/2016
12/22/2012	12/3/2014	2/17/2016
12/23/2012	12/6/2014	2/18/2016
12/25/2012	12/11/2014	3/4/2016
1/5/2013	12/12/2014	3/5/2016
1/23/2013	12/15/2014	3/6/2016
2/19/2013	12/16/2014	3/7/2016
3/6/2013	12/17/2014	3/9/2016
3/19/2013	12/19/2014	3/10/2016
3/30/2013	2/6/2015	3/11/2016
3/31/2013	2/7/2015	3/12/2016
4/1/2013	2/8/2015	3/13/2016
4/4/2013	4/7/2015	4/8/2016
4/7/2013	4/24/2015	4/9/2016
11/19/2013	4/25/2015	4/10/2016
11/20/2013	5/14/2015	9/2/2016
11/21/2013	6/10/2015	10/16/2016
12/6/2013	11/1/2015	10/17/2016
1/30/2014	11/2/2015	10/27/2016
2/2/2014	11/9/2015	10/28/2016
2/5/2014	11/15/2015	10/30/2016
2/6/2014	12/3/2015	11/20/2016
2/7/2014	12/10/2015	11/23/2016
2/8/2014	12/11/2015	11/26/2016
2/9/2014	12/13/2015	11/27/2016
2/26/2014	12/18/2015	12/7/2016
2/28/2014	12/20/2015	12/8/2016
3/5/2014	12/21/2015	12/10/2016
3/26/2014	12/28/2015	12/12/2016
3/29/2014	12/29/2015	12/15/2016
3/31/2014	1/4/2016	12/23/2016
4/1/2014	1/5/2016	1/2/2017
4/4/2014	1/6/2016	1/3/2017
4/25/2014	1/10/2016	1/4/2017
9/25/2014	1/13/2016	1/7/2017
10/25/2014	1/14/2016	1/8/2017
10/31/2014	1/15/2016	1/9/2017
11/13/2014	1/16/2016	1/10/2017
11/19/2014	1/17/2016	1/12/2017
11/20/2014	1/18/2016	1/18/2017
11/26/2014	1/19/2016	1/20/2017

ATTACHMENT A
Rain Dates, Pick-n-Pull Richmond #12, Concord, CA

1/21/2017
1/22/2017
1/23/2017
2/2/2017
2/3/2017
2/5/2017
2/6/2017
2/7/2017
2/8/2017
2/9/2017
2/16/2017
2/17/2017
2/19/2017
2/20/2017
2/21/2017
3/5/2017
3/6/2017
3/20/2017
3/21/2017
3/22/2017
3/24/2017
4/6/2017
4/7/2017
4/8/2017
4/16/2017
4/17/2017
4/19/2017
10/23/2017
11/6/2017
11/8/2017
11/9/2017
11/15/2017
11/16/2017